

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JASON SMITH, GARY L. AUSTIN,	:	CIVIL ACTION
RICK GRESSNER, JACK W. ANGLE,	:	Case No. C2-04-774
WENDELL G. ESTEP, ROBIN L. KING,	:	
RYAN D. BAER and RONALD E. ROAR,	:	
on behalf of themselves and all others	:	
similarly situated,	:	JUDGE FROST
	:	MAGISTRATE JUDGE KING
Plaintiffs,	:	
v.	:	
	:	
LOWE'S HOME CENTERS, INC.,	:	
	:	
Defendant.	:	
	:	

AGREED ORDER

NOW COMES Plaintiff, Jason Smith on behalf of himself and others similarly situated ("Plaintiffs") and Defendant Lowe's Home Centers, Inc ("Defendant"), by and through their attorneys, in the above-titled cause of action, and herewith agree to the following limitations on the scope of discovery:

The parties agree to a maximum 375 written interrogatories and a maximum of 100 depositions from the 375 randomly selected members of the opt-in class, 11 of those depositions will be of the named plaintiffs. The parties agree that the 11 named plaintiffs will respond to the interrogatories. The parties agree that 364 opt-in members will be selected randomly for purposes of the interrogatory answers. The 364 opt-in members will be randomly selected by listing the entire opt-in class – excluding the named plaintiffs – 1492 opt-ins, by the store last worked in Ohio and then listed alphabetically within each store. Then the selection will occur by choosing every fourth class member beginning with opt-in Plaintiffs in the lowest numbered store in Ohio and continuing through to the highest numbered store, proceeding sequentially until 364 individuals are chosen.

Plaintiffs acknowledge that Defendant seeks to dismiss 66 current members of the opt-in class based on their alleged ineligibility to be class members. If one of those individuals is chosen in the above-described sample,

but that opt-in is dismissed from the lawsuit by the Court, Defendant reserves the right to substitute an eligible opt-in Plaintiff by selecting the next name on the list.

The parties agree that the scope of discovery, as it pertains to individual class members, will be accordingly limited to these 375 individuals.

The parties agree that they will defer discovery on Rule 23 certification, until discovery is underway with regard to Rule 216(b) certification discovery. The parties agree that nothing herein precludes Plaintiffs from seeking discovery regarding Defendant's purported companywide practices as it relates to administration of the Salary + Overtime Plan or allegations in the Complaint.

The parties agree that Plaintiffs may take up to 50 depositions as they see fit.

Respectfully submitted,

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Dated: June 1, 2006

SO ORDERED:

s/Norah McCann King
Norah McCann King
United States Magistrate Judge